



4310-05-P

## **DEPARTMENT OF THE INTERIOR**

### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 948**

**[WV-125-FOR; Docket ID: OSMRE-2017-0003 S1D1S SS08011000 SX064A000  
190S180110; S2D2S SS08011000 SX064A000 19XS501520]**

#### **West Virginia Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed Rule with public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). On May 3, 2017, West Virginia Department of Environmental Protection (WVDEP) submitted a program amendment to OSMRE to modify its pre-blasting survey requirements, bond release and bonding requirements, and to modify disbursements from the Water Reclamation Trust Fund. This document gives the times and locations that the West Virginia program and this proposed amendment are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4:00 p.m., Eastern Daylight Time (e.d.t.), [INSERT DATE 30 DAYS AFTER THE DATE OF

PUBLICATION IN THE FEDERAL REGISTER]. If requested, we will hold a public hearing on the amendment on [INSERT DATE 25 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. We will accept requests to speak at a hearing until 4:00 p.m., e.d.t. on [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit written comments, identified by WV-125-FOR; OSM-2017-0003, by any of the following methods:

- **Mail/Hand Delivery:** Mr. Roger W. Calhoun, Director, Charleston Field Office  
Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East  
Charleston, West Virginia 25301
- Fax: (304) 347-7170
- Federal eRulemaking Portal: The amendment has been assigned the Docket ID  
OSM-2017-0003. If you would like to submit comments go to  
<http://www.regulations.gov>. Follow the instructions for submitting comments.

**Instructions:** All submissions received must include the agency name and docket ID for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive

one free copy of the amendment by contacting OSMRE's Charleston Field Office or the full text of the program amendment is available for you to read at [www.regulations.gov](http://www.regulations.gov).

Charleston Field Office

Office of Surface Mining Reclamation and Enforcement

1027 Virginia Street, East, Charleston, West Virginia 25301,

E-mail: [chfo@osmre.gov](mailto:chfo@osmre.gov).

West Virginia Department of Environmental Protection

601 57th Street, SE, Charleston, WV 25304

Telephone: (304) 926-0490.

In addition, you may review a copy of the amendment during regular business hours at the following locations:

Morgantown Area Office

Office of Surface Mining Reclamation and Enforcement

604 Cheat Road, Suite 150, Morgantown, West Virginia 26508,

Telephone: (304) 291-4004 (By Appointment Only).

Beckley Area Office

Office of Surface Mining Reclamation and Enforcement

313 Harper Park Drive, Suite 3, Beckley, West Virginia 25801,

Telephone: (304) 255-5265.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director,  
Charleston Field Office, Telephone: (304) 347-7158. E-mail: [chfo@osmre.gov](mailto:chfo@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the West Virginia Program
- II. Description and Submission of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

**I. Background on the West Virginia Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, Federal Register (46 FR 5915). You can also find later actions concerning the West Virginia program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

## **II. Description of the Proposed Amendment**

By letter (Administrative Record No. 1608) dated May 3, 2017, the West Virginia Department of Environmental Protection (WVDEP) sent us an amendment to its program under SMCRA (30 U.S.C. 1201 et seq.). The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Enrolled Senate Bill 687 seeks to modify bond releases and bonding requirements and to modify the requirements for how money is to be paid from the Special Reclamation Water Trust Fund to assure a reliable source of capital and operating expenses for the treatment of discharges from bond-forfeited sites. Senate Bill 687 was adopted by the West Virginia Legislature on April 8, 2017, and approved by the Governor on April 26, 2017. These changes cannot take effect for the purposes of the State program until approved as an amendment by OSMRE pursuant to 30 CFR 732.17(g). WVDEP requests that we approve the following changes to the approved State program:

- 1. W.VA. Code 22-3-11(g)(1) and (g)(2) - Bonds; amount and method of bonding; bonding requirements; special reclamation tax and funds; prohibited acts; period of bond liability.**

The State seeks to continue the Special Reclamation Fund and, at subsection (g)(1), allow moneys in the Special Reclamation Water Trust Fund to be used to assure a reliable source of capital and operating expenses for the treatment of water discharges from forfeited sites where the Secretary has obtained or applied for an NPDES permit.

At revised subsection (g)(2), the State proposes to delete provisions that require the Secretary to develop a long-range planning process for selection and prioritization of sites to be reclaimed so as to avoid inordinate short term obligations of the assets in both funds of such magnitude that the solvency of either fund is jeopardized. In addition, the State proposes to delete the provision that provides the Secretary may use both funds for the purpose of designing, constructing and maintaining water treatment systems when they are required for a complete reclamation of the affected lands described in this subsection.

This proposed revision falls under the Federal provisions at 30 CFR 800.11(e) and section 509(c) of SMCRA.

**2. W.VA. Code 22-3-11(g)(3)(A) - Bonds; amount and method of bonding; bonding requirements; special reclamation tax and funds; prohibited acts; period of bond liability.**

Previously, subsection 22-3-11(g)(2) was revised by the State to provide a tax credit to any mine operator who performs reclamation or remediation at a bond forfeiture site within the State. Under the proposed amendment, former subsection (g)(2)(A) was renumbered (g)(3)(A) to allow for the revision of (g)(2).

**3. W.VA. Code 22-3-23(c) and (i) - Release of bond or deposits; application; notice; duties of Secretary; public hearings; final maps on grade release.**

WVDEP proposes to amend subsection 23(c) by adding new bond release requirements at subdivisions (2) and (3). Subdivision (2) provides that the bond or deposit in whole or in part, may be released after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan.

When determining the amount of bond to be released after successful revegetation has been established, the Secretary shall retain that amount of bond for the revegetated area which would be sufficient for a third party to cover the cost of reestablishing revegetation and for the period specified for operator responsibility in section thirteen of this article. This revision also includes specific provisions with respect to when the bond can be released and under what circumstances.

Subdivision (3) provides that when the operator has successfully completed all surface coal mining and reclamation activities, the remaining portion of the bond may be released, but not before the expiration of the period specified for operator responsibility in section thirteen of this article provided that no bond shall be fully released until all reclamation requirements are complied with.

The State proposes to delete the requirement of the minimum \$10,000 bond after grading, seeding, fertilizing, irrigation, and other associated reclamation activities. Also included in this proposed revision are provisions relating to conditions that have to be met prior to the Secretary releasing all or part of the bond.

Finally, WVDEP proposed to add subdivision (i) to its bonding requirements which authorizes the Secretary to propose rules for legislative approval during the 2018 regular session of the Legislature in accordance with the provisions of article three, chapter twenty-nine-a of the code and revisions to the Legislative Rule entitled West Virginia Surface Mining Reclamation Rule, Title 38, Series 2 of the West Virginia Code of State Rules, to implement the revisions to this article made during the 2017 legislative session. In addition, the Secretary is to specifically consider the adoption of corresponding federal standards codified at 30 C.F.R. 700 *et. seq.*

These revisions fall under the Federal bond release requirements at 30 CFR 800.11, 800.13, 800.14, 800.15, 800.16, 800.17, 800.30 and 800.40 and sections 509 and 519 of SMCRA.

### **III. Public Comment Procedures**

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

#### Electronic or Written Comments

If you submit written or electronic comments on the proposed rule, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason



for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

#### Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.d.t. on [Insert date 15 days after date of publication in the FEDERAL REGISTER]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under

**FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

#### Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

#### **IV. Procedural Determinations**

##### Executive Order 12866 - Regulatory Planning and Review

Pursuant to Office of Management and Budget (OMB) Guidance dated October 12, 1993, the approval of state program amendments is exempted from OMB review under Executive Order 12866.

#### Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

#### List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 11, 2018

Thomas D. Shope, Regional Director

Appalachian Region

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